(25,543)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 713.

THE SAVINGS BANK OF DANBURY, OF DANBURY, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

DIETRICH E. LOEWE, AS SURVIVING PARTNER OF THE FIRM OF D. E. LOEWE & CO.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1916.

a United States Circuit Court of Appeals for the Second Circuit.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. LOEWE & Co., Plaintiff-in-Error,
vs.
THE SAVINGS BANK OF DANBURY, Defendant-in-Error.

TRANSCRIPT OF RECORD.

Daniel Davenport, Bridgeport, Conn.; Walter Gordon Merrit, 135 Broadway, New York City, Attorneys for Plaintiff-in-Error.
J. Moss Ives, Danbury, Conn., Attorney for Defendant-in-Error.

United States Circuit Court of Appeals, Second Circuit. Filed Mar. 9, 1916. William Parkin, Clerk.

b *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

To The President of the United States to the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Because in the record and proceedings as also in the modification and affirmance of the judgment of a plea which is in the said Circuit Court of Appeals for you or some of you, between Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., plaintiff in error and The Savings Bank of Danbury, defendant in error, a manifest error hath happened to the great damage of the said defendant in error as by complaint appears,

We being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ so that you have the same in the said Supreme Court of Washington within thirty days from the date hereof and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice

of the United States, the 11th day of August, in the year of our Lord one thousand nine hundred and sixteen.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals, Second Circuit.

c [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Dietrich E. Loewe, etc., Plaintiff-in-Error, vs. Savings Bank of Danbury. Writ of Error. J. Moss Ives, Danbury, Conn., Attorney for Defendant-in-Error. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 11, 1916. William Parkin, Clerk.

1 *Writ of Error.*

The United States Circuit Court of Appeals for the Second Circuit.

The President of the United States of America, to the Judge of the District Court of the United States for the District of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., Plaintiff, and The Savings Bank of Danbury, Defendant, a manifest error hath happened, to the great prejudice and damage of the plaintiff, as is said and appears by the petition herein, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Second Circuit, together with this writ, so that you have the same at the City of New York, in the State of New York, in the said Circuit, on the 9th day of March, 1916 next, in the said Circuit Court of Appeals, to be then and there held; that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error
2 what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 24th day of February, 1916.

C. E. PICKETT,
Clerk of the United States District Court for the District of Connecticut.

The foregoing writ of error is hereby allowed this 24th day of February, 1916.

EDWIN S. THOMAS,
United States District Judge.

(Endorsed:) Filed 24th Feb., 1916.—Charles Elliott Pickett.—Clerk.

Writ and Complaint.

UNITED STATES OF AMERICA,
District of Connecticut:

President of the United States to the Marshal of the District of Connecticut, Greeting:

You are hereby commanded to attach to the value of one hundred thousand dollars ($100,000) the goods, or estate of The Savings Bank of Danbury, a corporation organized and existing under the Laws of the State of Connecticut, and located and having its principal place of business in the town of Danbury and State of Connecticut, and it summon to appear before the District Court of the United States for the District of Connecticut to be held at New Haven in said District on the First Monday of October, 1913, then and there to answer unto D. E. Loewe and Martin Fuchs,
3 both residents of the Town of Danbury in the State and District of Connecticut in a civil action where the plaintiffs complain and say:

1. The plaintiffs brought a civil action to the Circuit Court of the United States for the District of Connecticut holden at Hartford in and for the District of Connecticut on the second Tuesday of October, 1903, by a lawful writ of attachment issued and dated on the 31st day of August, 1903, signed by R. F. Carroll, Deputy Clerk of said Circuit Court for the said District of Connecticut demanding two hundred and forty thousand dollars ($240,000) damages and costs directed to the Marshal of the United States for the District of Connecticut directing him to attach to the value of two hundred and fifty thousand dollars ($250,000) the goods and estate of each of the following persons, to wit: William P. Bailey, Charles Bailey, Frederick Benedict, John Cords, Virgil Dibble, T. Archibald Evans, Charles Frost, Howard S. Gilbert, George H. Gilbert, Charles Green, John Halpin, Reuben Johnson, Henry C. Judd, John L. Kane, Martin Lawlor, Charles Lathrop, George W. Morehouse, Byron Morgan, Barney Murphy, Owen Murray, William Ochs, William Ohler, Levi Short, Orrin Smith, William Stone, Myron Trowbridge, Patrick Troy, all of Bethel, Theophilus Abieniste, Andrew Aitken, Nicholas W. Allen, Thomas H. Allen, Daniel H. Barnes, Nicholas W. Barzin, Clemens Beschele, Frederick S. Blackburn, John Blake, Simon Blake, Herman H. Bohman, Nelson H. Booth, James N. Boughey, Thomas Boyd, Peter J. Brennan, Alphonse Bresson, Theodore Bright, Bryon S. Brooks, Andrew G. Brown, Chauncey H. Butler, James P. Callahan, John J. Callahan, Achille Canale, Thomas J. Cassidy, William Clancy, Elmer R. Clark, John H. Collins, Lewy W. Comes, Patrick Connolly, Michael Corbett, James D. Costello, John H. Craft, Byron W. Crane,
4 James Crotty, John Crotty, Peter T. Currie, William Deakin, George F. Denton, James Dillon, William S. Dutcher, John

Dyer, John Ellegett, Patrick Ellegett, Carl Erdman, Timothy H. Farrell, Patrick J. Feeley, Patrick J. Fisher, Emil Floyske, Thomas Foley, Peter Gallagher, Christian Gottlieb Garni, William E. Gartner, Martin Gorman, Michael C. Griffin, Wright Hampson, David J. Hardy, Alexander Harkness, John Harkness, Patrick Hart, John Hassett, Stephen Havren, Michael Hennessy, George M. Herrick, Charles A. Hodge, Adolph Holdeichel, Nathan C. Hoy, William Humphries, Patrick F. Hunt, Charles W. Hurd, Michael Hurd, Patrick E. Jeffrey, Daniel Kearns, Martin Keating, Thomas Keenan, Daniel P. Kelly, Michael F. Kenney, John Keogh, Charles J. King, Frank Kornhass, Frank E. Krebs, Martin Lauf, Edward D. Lees, John Leonard, Thomas Leonard, Michael F. Lynch, John Morris, Jeremiah McCarthy, Patrick J. McCarthy, Patrick T. McCarthy, Martin McCue, Thomas E. McGauley, Martin McGettrick, James F. McGlone, John McGlone, Peter McGlone, Patrick McGrath, Charles F. McHan, Thomas McHugh, Daniel McInerey, Frank Meath, Henry Messer, Henry C. Michael, George J. Miller, Gustave Mougin, Eugene L. Mulkin, Daniel Murphy, Timothy Murray, John B. Nowlan, William V. Nowlan, George T. Oakley, Peter O'Boy, Louis E. Orton, Daniel J. Osborne, Alvah S. Pearce, George H. Phillips, Peter Picken, Arthur L. Pickett, John Pribula, Jacob Prinz, Christian Rheinhold, Frank Rhode, Frank E. Seaman, Hugh C. Shalvoy, Charles Shaffer, Frederic L. Stahl, George Stuckley, Michael E. Sullivan, William S. Sullivan, Joseph Tosi, Thomas E. Waters, Samuel S. Wilson, Frank K. Wildman, all of Danbury, Fanton W. Beers, Albert Berg, William A. Brennan, Stephen Carlin, Edward Cunningham, George A. Davis, Charles Flynn, Addison Hathaway, Peter F. Kearney, Patrick Keating, James Kinnane, Thomas Layhe, Charles Moore, S. Wallace Osborne, John E. Paul, Robert Pearson, John Redway, Owen Reilley, Daniel Riordan, John E. Rooney, Thomas F. Saunders, John W. Scully, Max Singerwald, Charles Smith, Frederick Taylor, Peter Ward, William S. Weisheit, James Whitney, all of Norwalk, and to leave an attested copy of said writ and of the accompanying complaint at least twelve days before the session of court with The Savings Bank of Danbury the present defendant corporation having its principal place of business at the Town of Danbury as the agent, trustee and debtor of the aforesaid persons named therein as defendants.

2. Said writ and accompanying complaint was duly served on each of the aforesaid persons named therein as defendants and also a true and attested copy of the same was by said United States Marshal for the District of Connecticut left with said The Savings Bank of Danbury defendant herein as agent, trustee and debtor of and to each of the aforesaid persons named therein as defendants more than twelve days before the sitting of said court to which said writ, being duly served, was returned.

3. By legal removes said action came to the May Term of the District Court of the United States for the District of Connecticut holden at Hartford on the fourth Tuesday of May, 1912, when and where, to wit on November 15th, 1912, the plaintiffs recovered

judgment against each of the aforesaid persons for Two hundred and forty thousand dollars ($240,000) damages and Twelve thousand one hundred and thirty and 90/100 dollars ($12,130.90) costs and statutory attorney fees.

4. Thereupon the plaintiffs took out execution for the sums aforesaid with interest and twenty-five cents for said execu-
6 tion against each of said defendants individually which execution was dated November 25th, 1912, and signed by E. E. Marvin, Clerk of said Court and directed to the Marshal of the United States for the District of Connecticut to serve and return.

5. Said execution on November 25th, 1912, was put into the hands of Sidney E. Hawley, United States Marshal, for the District of Connecticut, who on December 24, 1912, by direction of the plaintiffs made demand of The Savings Bank of Danbury the present defendant as agent, trustee and debtor of and to each of said judgment debtors severally of the sums contained in said execution and his costs and fees and of any estate of each or any of said several judgments debtors in its hands, or moneys due from it to each or any of said judgment debtors severally by duly making demand upon the proper officer of said Bank as provided by statute at the office or usual place of business of said defendant corporation within its regular business hours.

6. The Savings Bank of Danbury, the defendant herein, through its said officer of whom demand was made, refused to pay said execution or to show any estate of any of the aforesaid individual judgment debtors, or to pay any debt due from it to any of the aforesaid judgment debtors individually to said officer whereon to levy said execution with his fees amounting to $90.85 all of which doings on said execution said Marshal made due return by endorsing the same on said execution and returning the same to the Clerk of said Court wholly unsatisfied.

7. The defendant at the time the copy of said writ was left with it in service was indebted to each of said defendants severally
7 in various sums of money and had in its hands the estate of each of said defendants and yet it would not expose or discover any said estate of any of said defendants whereon said execution might be levied nor pay said debts or any part thereof to said officer, and that the aggregate amount of said moneys so owed by defendant and the aggregate amount of estate so possessed by the defendant exceeded $100,000.

8. Said judgment has never been reversed nor has the amount due thereon and on said execution as aforesaid, or any part thereof ever been paid.

The plaintiffs claim $100,000 damages.

Elmore S. Banks, of Fairfield, within said State and District of Connecticut, is recognized in the sum of $150 to prosecute, etc.

Of this writ with your doings thereon make due return.

Witness Hon. Edwin E. Marvin, Clerk of the United States District Court for the District of Connecticut, the office of Judge of said Court being vacant, and the seal of said District Court at Hartford in said District this 6th day of September, 1913.

R. F. CARROLL,
Deputy Clerk.

The defendant, The Savings Bank of Danbury, by J. Moss Ives, its attorney subsequently entered its general appearance on or about the 27th day of September, 1913.

8 *Extract from Docket.*

February 16th, 1915.—Judgment by default for want of a timely answer or other pleading, this day entered.

United States District Court, District of Connecticut.

No. 1807.

D. E. LOEWE et al.
vs.
THE SAVINGS BANK OF DANBURY.

Action at Law.

To Messrs. Davenport & Banks and Walter G. Merritt, Attorneys for the Plaintiffs.

Please take notice that the annexed motion to cite in assignee of debt under foreign attachment, and motion for hearing in damages, will be presented to the Court for hearing on the first Monday of June, 1915, to wit,—the 7th day of June, 1915, at ten o'clock in the forenoon of that day, or as soon after as counsel may be heard.

Dated at Hartford, May 13th, 1915.

GROSS, HYDE & SHIPMAN,
Defendant's Attorney-.

9 United States District Court for the District of Connecticut.

Action at Law. No. 1807.

D. E. LOEWE et al.
vs.
THE SAVINGS BANK OF DANBURY.

Motion for Hearing in Damages.

The defendant in the above entitled action hereby moves that a hearing in damages upon default be had by the Court.

THE SAVINGS BANK OF DANBURY,
By J. MOSS IVES, *Its Attorney.*

GROSS, HYDE & SHIPMAN,
Of Counsel.

United States District Court for the District of Connecticut.

Action at Law. No. 1807.

D. E. LOEWE et al.
vs.
THE SAVINGS BANK OF DANBURY.

Motion to Cite in Assignee of Debt under Foreign Attachment.

The defendant in the above entitled action says:

1. That at the time the writ described in paragraph 2 of the complaint was left with the defendant, the following defendants had on deposit with it the sums set opposite their respective names:

Martin Lawlor	$614.70
George Morehouse	294.36
George H. Gilbert, or Anna E. or Julia E.	29.21
Howard S. Gilbert	3.85
Daniel P. Kelley	720.59
Patrick Connelly, or Margaret	51.31
Albert Hoyt	2,309.64
Owen Murray	82.75
John Halpin	954.90
Edward Manion	150.88
Edward Culhane	105.03
Patrick Wixted	8.24
Henry Gilbert	513.14
Starr Bassett, or Jane E.	742.13
Myron Trowbridge	10.83
Frederick Benedict	260.00
Orrin Smith	747.06
Reuben Johnson	187.09
E. Romain Barnum	449.67
Byron Morgan	1,925.56
Joseph Burr	257.83
Daniel H. Barnes	42.16
Clemens Beschele	25.00
Frederick S. Blackburn	1,191.46
Nelson H. Booth	537.51
Thomas Boyd	41.88
John Bradshaw	508.75
Theodore Bright	792.04
Orrin L. Bronson	92.93
Byron S. Brooks	199.47
Thomas D. Brooks	25.44
John H. Collins	377.56
Lewy W. Comes	730.10
Byron W. Crane	1,810.21
Michael Crowe	1,965.38
William Deakin	1,227.21

William S. Dutcher	5.09
Patrick Elligett	234.53
Patrick Flanagan	54.18
Emil Floyske	1.06
William E. Geartner	5.82
Patrick Hart	100.00
William Humphries	398.18
Patrick F. Hunt	466.02
John Keough, "Keogh"	3,155.37
Frank E. Krebs	104.74
Thomas Leonard	103.89
William E. Luke	18.57
Thomas E. McGauley	44.66
James F. McGlone	80.94
Thomas McHugh	150.47
Frank Meath, or Margaret Meath	624.82
Henry Messer	1.57
Henry C. Michael	526.50
George J. Miller & Lena	68.37
Patrick Moffitt	1,252.20
Daniel Murphy	216.39
Peter O'Boy	1.87
George Stuckey	368.01
Stephen Stucky & Sarah Stucky	324.06
Thomas E. Waters	77.71
Total	$28,370.89

2. Since said writ was left with the defendant, the declared and accrued dividends on said sums on deposit amount to $15,039.10.

3. On the — day of December, 1903, and on various dates subsequent thereto, said depositors by instruments in writing assigned said sums on deposit to the United Hatters of North America, a
12 voluntary association of hatters, located and having an office and principal place of business in the City, County and State of New York, which written assignments were duly lodged with the defendant, and on the 5th day of February, 1915, said United Hatters of North America notified this defendant that it claimed all of the dividends which had accrued thereon after said writ was served, and demanded the payment to it of such dividends.

4. On the 5th day of February, 1915, the plaintiffs demanded of this defendant the sums of money attached as aforesaid in the defendant bank, together with the dividends due thereon.

5. The defendant has no claims upon said principal sums of money attached, nor upon the dividends which are due thereon, and is willing to pay the same to such person as the Court shall direct.

The defendant therefore asks

That the said United Hatters of North America be given notice in writing, signed by proper authority, that this scire facias is pending, which notice shall be given in such time and manner as the Court shall direct, and further directing the time in which said United Hatters of North America shall give to this defendant suffi-

cient security to indemnify it against all costs it may suffer in the event that judgment shall be given against it in this action, in accordance with the requirements of Section 937 of the General Statutes of Connecticut.

THE SAVINGS BANK OF DANBURY,
By J. MOSS IVES, *Its Attorney.*

GROSS, HYDE & SHIPMAN,
Of Counsel.

13 *Order.*

United States District Court for the District of Connecticut.

Action at Law. No. 1807.

D. E. LOEWE et al., Plaintiffs,
against
THE SAVINGS BANK OF DANBURY, Defendant.

Order to Cite in Assignee of Debt under Foreign Attachment.

The defendant in the above entitled action having filed its motions asking for a hearing in damages upon the default rendered therein, and also asking that The United Hatters of North America, a voluntary association of hatters located and having an office and principal place of business in the City, County and State of New York, be given notice of the pendency of this proceeding, in accordance with the provisions of section 937 of the General Statutes of Connecticut, Revision of 1902, as by said motions on file more fully appears, and the Court having heard the parties thereon and granted said motions, it is therefore

Ordered, that a hearing in damages upon said default be heard by this Court, and that The United Hatters of North America aforesaid be given notice that this proceeding of scire facias is
14 pending by depositing a copy of the writ and complaint in this action and of this order, on or before the 29th day of September, 1915, in the post office, postage paid, at Hartford, directed to said United Hatters of North America, #Waverly Place, New York City, by registered mail, and that a similar copy of said writ and complaint and order be left with William T. Tammany, City National Bank Building, South Norwalk, Connecticut, attorney for said United Hatters of North America, on or before said 29th day of September, 1915, by some proper officer or indifferent person, and that if said United Hatters of North America have any claim to the monies or debts attached and sought to be recovered in this action, or any portion thereof, it give to this defendant security in the sum of Two Hundred and Fifty dollars to i-demnify it against all costs and appear before this Court on or before the 11th day of October, 1915, and be heard upon said hearing in damages and defend the

same, or otherwise be barred of all claim and demand upon said monies and debts.

Dated at Hartford, this 24th day of September, 1915.

EDWIN S. THOMAS,
U. S. D. J.

Thereupon the United Hatters of North America, filed its bond as required by said order and said bond was approved and accepted.

15 *Scire Facias.*

United States District Court for the District of Connecticut.

Action at Law. No. 1807.

D. E. LOEWE et al., Plaintiffs,
against
SAVINGS BANK OF DANBURY, Defendant.

Answer of United Hatters of North America.

The United Hatters of North America, cited in to defend in the above entitled cause pursuant to the order of said Court, dated September 24th, 1915, answers as follows:

1. Paragraphs 1, 2 and 3 of the complaint are admitted.

2. As to the allegations contained in paragraphs 4, 5 and 6 this defendant has no knowledge or information thereof sufficient to form a belief.

3. That the defendant was in possession of money or estate of certain of the defendants as alleged in paragraph 7 at the time said writ was left in service is admitted. Except as herein admitted, said paragraph 7 is denied.

16 4. That said judgment has never been reversed, as alleged in paragraph 8 is admitted. Except as herein admitted, said paragraph 8 is denied.

5. After said writ was left in service and said attachment had been made, this defendant purchased from the original defendants, named in paragraph 1 of the complaint whose estate had so been attached, the said attached estate and paid said defendants full value therefor, and said estate was duly transferred by said defendants to this defendant, and notice thereof was given to the above named defendant Bank, and this defendant thereupon became the equitable and bona fide owner of said estate.

6. Since said attachment, various dividends have been declared by said defendant Bank, and said dividends are owned by and due to this defendant on said attached accounts by virtue of the transfer of said estate to this defendant, as set forth in paragraph 5 hereof, and this defendant has demanded of said defendant Bank the payment of said dividends.

7. Said Bank has neglected and refused to pay said dividends to this defendant.

8. The estate in the possession of said defendant Bank at the time said writ was left in service and said attachment made has, with the consent of this defendant, been delivered and paid to the plaintiffs in this action, D. E. Loewe & Company.

9. This defendant claims the dividends which have been declared by said defendant Bank on said attached moneys and estate, and to be entitled to receive the same by virtue of the transfer of said attached estate by the original defendants, as set forth in paragraph 5.

17 This defendant, therefore, prays judgment in its favor for the amount of said dividends, namely, $15,000.00.

THE UNITED HATTERS OF NORTH AMERICA,
By WM. F. TAMMANY,
Its Attorney.

(Endorsed:) Filed October 11th 1915.

Subsequently Martin Fuchs, one of the plaintiffs died and his death was duly noted on the record prior to final judgment and the case was thereafter continued by Dietrich E. Loewe as the surviving partner of D. E. Loewe & Co.

Judgment File.

District Court of the United States, District of Connecticut.

No. 1807. Law.

DIETRICH E. LOEWE, of Danbury, Connecticut, as Surviving Partner of the Firm of D. E. LOEWE & Co., Plaintiff,
vs.
THE SAVINGS BANK OF DANBURY, of Danbury, Connecticut, Defendant.

Judgment.

This action of scire facias, by complaint on file claiming $100,000 damages, came to this court at its term commencing on the
18 first Tuesday of December, 1913, when the defendant appeared.

Thence by continuances it came to the December term, 1914, when the defendant on February 16th, 1915 suffered a default therein.

Thence by continuances it came to the May term, 1915 when the defendant moved for a hearing in damages upon said default as by written motion on file, which motion was granted.

Upon the defendant's written motion on file, alleging that at the time the writ, described in Paragraph 2 of the complaint, was left with the defendant in service, certain named defendants therein had on deposit with it various sums of money amounting in the aggregate to $28,370.89, that on various dates subsequent thereto said depositors, by instruments in writing, had assigned said sums on

deposit to the United Hatters of North America, a voluntary association of hatters located and having an office and principal place of business in the city, county, and state of New York, which written assignments had been duly lodged with the defendant, and that on the 5th day of February 1915, said United Hatters of North America notified said defendant that it claimed all of the dividends which had accrued thereon after said writ was served, and demanded the payment to it of such dividends, and praying for an order of notice to said United Hatters of North America that this scire facias was pending, and directing the time in which they should give the defendant sufficient security to indemnify it against all costs it might suffer in the event the judgment should be given against it in this action, the court on September 24th, 1915 ordered said notice to be given and directed the time in which said United Hatters of North America should give such security.

Thereupon said United Hatters gave such security for costs
19 and appeared and filed an answer as on file in which it alleged that after said writ was left in service and said attachment had been made, it purchased the said attached estate from the original defendants named in Paragraph 1 of the complaint herein, whose estate had been so attached, and paid said defendants full value therefor; and that said estate was duly transferred by said defendants to it, and that notice thereof was given to the above named defendant bank, and thereupon said United Hatters became the equitable and bona fide owner of said estate; that since said attachment various dividends had been declared by said defendant bank and that said dividends are owned by and are due to the United Hatters on said attached accounts by virtue of the transfer of said estate to it; that it had demanded of said defendant bank the payment of said dividends which the bank had neglected and refused to pay to it; and it claimed the dividends which have been declared by said defendant bank on said attached money and estate by virtue of the transfer to it of said attached estate by the original defendants.

Thence by legal removes this case came on to be heard before the court on the 23rd day of December, 1915, for an assessment of damages on said default and the court, having heard the parties, finds the issues as herein set forth, and, at the request of the plaintiff, specially sets forth the facts found as follows:

1. That the allegations of the paragraphs of the complaint numbered 1, 2, 3, 4, 5, 6, and 8 are true, and the allegations of paragraph 7 of the complaint are true except that the aggregate amount of the moneys so owned and possessed by the defendant as therein alleged was $18,461.54.

2. That the said sums of money so attached were savings bank deposits which the defendant held for the depositors under
20 the terms of its charter which provided as follows:

"Sec. 3. All deposits of money received by said corporation shall be used and improved to the best advantage, by loaning the same, in a manner not inconsistent with the laws of this state; or by investing the same by purchase in bank stock or any other public stock of any state, and disposing of the same as the interest of said corporation may require; and the income or profits thereof shall be

applied as dividends among the persons making the deposits, their executors and administrators, in just proportion, with such reasonable reduction as may be chargeable thereon. And the principal sums of such deposits may be withdrawn by the owners thereof, or by any other person or persons duly authorized for that purpose, on giving notice of such intention in writing, and lodging the same with the secretary of said corporation at least four months previous to such withdrawal."

3. That after said writ was left in service and said attachment had been made the United Hatters purchased the said attached estate from the original defendants named in Paragraph 1 of the Complaint herein, whose estate had been so attached, and paid said defendants full value therefor, and said estate was duly transferred by said defendants to said United Hatters, and notice thereof was given to the defendant herein, and said transferee thereupon became the equitable and bona fide owner of said estate, subject to the rights of the plaintiff acquired by virtue of said attachment.

4. That since said attachment, the defendant herein has, in
21 accordance with the terms of its charter, used and improved the moneys so deposited with it, and has regularly declared dividends upon said several deposits payable from the income and profits earned by the defendant from these and its other deposits and that the aggregate amount of dividends so declared upon the several deposits levied upon by said writ of attachment is $11,278.13.

5. That subsequent to the commencement of this action, the defendant on June 26th, 1915, with the consent of the United Hatters, paid to the plaintiff $17,558.37 and on July 8th, 1915, the further sum of $474.65 on account of the principal of said deposits so levied upon.

6. That there is still due and owing to the plaintiff on account of the principal of said attached deposits, the sum of $428.52.

The court finds the following conclusions of law from these facts:

That the plaintiff is entitled to recover $428.52 the amount of the principal of said attached deposits remaining unpaid.

That the plaintiff is not entitled to recover the interest or dividends on said deposits which accrued after said attachment.

That the plaintiff is not entitled to any recovery from the defendant on account of interest on any of said deposits.

Whereupon it is adjudged that the plaintiff recover of the defendant $428.52 and his costs taxed at — dollars and — cents.

EDWIN S. THOMAS,
U. S. D. J.

New Haven, Conn., 22 Feb'y, 1916.

22 *Opinion.*

District Court of the United States, District of Connecticut.

No. 1801. Law.

D. E. LOEWE et al.
vs.
THE UNION SAVINGS BANK OF DANBURY.

No. 1802. Law.

D. E. LOEWE et al.
vs.
NORWALK SAVINGS SOCIETY.

No. 1805. Law.

D. E. LOEWE et al.
vs.
SOUTH NORWALK SAVINGS BANK.

No. 1807. Law.

D. E. LOEWE et al.
vs.
SAVINGS BANK OF DANBURY.

Daniel Davenport, Esq., of Bridgeport, Conn., and Walter Gordon Merritt, Esq., of New York City, for Plaintiffs.

John R. Booth, Esq., of Danbury, Conn., for The Union Savings Bank of Danbury.

John H. Light, Esq., of Norwalk, Conn., for Norwalk Savings Society and South Norwalk Savings Bank.

23 J. Moss Ives, Esq., of Danbury, Conn., for Savings Bank of Danbury.

William F. Tammany, Esq., of South Norwalk, Conn., for The United Hatters of North America, assignee.

Martin J. Cunningham, Esq., of Danbury, Conn., for The United Hatters of North America.

THOMAS, *District Judge:*

These are actions in the nature of scire facias brought pursuant to Section 931 of the General Statutes of Connecticut, Revision of 1902, to enforce attachments by mesne process in the original actions upon which these actions are founded. The attachments were made pursuant to the provisions of Section 880 of the General Statutes of Connecticut, Revision of 1902, and covered certain funds on deposit with these defendants,—savings banks incorporated under charters from the Connecticut General Assembly.

Before the rendition of final judgment in the original action in which the attachments were made, the defendants as-igned to The United Hatters of North America, a voluntary association, the dividends or interest accruing on said deposits and which were declared after the attachment, and by virtue of said assignments said United Hatters of North America claim to be the owner of said dividends.*

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* It was stipulated between counsel that the transfers of the accounts of the defendants in the Savings Bank of Danbury were all made substantially as follows:—

"BETHEL, CONN., Nov. 9, 1903.

Treasurer of the Savings Bank of Danbury:

Pay John Phillips, Sec., or bearer, the whole amount standing to my credit, and charge the same on my deposit Book No. 29989.

FREDERICK E. BENEDICT.

Witness:
MICHAEL CROWE.

$819.23. DANBURY, CONN., April 18th, 1904.

Savings Bank of Danbury.

Pay Martin Lawlor, Sec'y &c., or order, Eight Hundred & Nineteen and 23/100 Dollars (or so much as may be due), on my Deposit Book, No. 27808.

THEODORE G. BRIGHT.

Witness:
G. FRED LYON."

And that the deposits in The Union Savings Bank of Danbury, the Norwalk Savings Society and the South Norwalk Savings Bank, were all transferred as follows:—

$502.92. DANBURY, CT., Dec. 14, 1903.

The Union Savings Bank of Danbury, Conn.

Pay to John Phillips, Sec'y, or order, Five Hundred & Two & 92/100 Dollars, and charge my account No. 20562.

(Sign Here) FRED S. BLACKBURN.

Witness:
H. C. SHALVOY."

And that each transfer was accompanied by delivery of the deposit book of the defendant making the transfer.

24 The association has appeared to defend these actions pursuant to an order heretofore entered herein under Section 937 of the General Statutes of Connecticut, Revision of 1902 (see

226 Fed. 294) and has filed an answer in which it is alleged that the dividends or interest accruing and declared subsequent to the original attachment were not held by the attachment but passed to it and became its property by virtue of the assignments. So the sole question in this proceeding is whether the interest or dividends which have accumulated in the hands of the several banks and which would belong to the depositors but for the assignments, now belong to the judgment creditor by virtue of the original attachment, or to the assignee of the fund by virtue of the assignments which were made after the attachments.

Section 880 of the General Statutes, Revision of 1902, provides that where a debt is due from any person to the defendant in a civil action the plaintiff may insert in his writ a direction to the officer to leave a true and attested copy thereof and of the accompanying complaint, at least twelve days before the session of the Court to which it is returnable with such debtor of the defendant, and that from the date of leaving such copy any debt due from such
25 garnishee shall be secured in the hands of such garnishee to pay such judgment as the plaintiff may recover. The liability of the garnishee is further defined in Section 931 of the General Statutes of Connecticut, Revision of 1902, so as to include,

"all the effects in the hands of the garnishee at the time of the attachment, or debts then due from him to the defendant,"

excepting that in the case of a debt, legacy, or distributive share the liability of an executor, administrator, or trustee garnisheed shall extend to and include any debt, legacy, or distributive share "due or to become due."

So the question in the present case is as to the meaning of the words "debt is due" in Section 880, and the words "debts then due" in Section 931, and the answer to this question will furnish the answer to the proposition of law here involved. The meaning of these words has several times been before the Supreme Court of Errors of Connecticut for judicial ascertainment and definition. While it has always been the policy of the Courts of Connecticut to liberally construe the statute and not to restrict its application to liquidated debts; they have, nevertheless, at all times insisted that in order that the debt sought to be attached should be "due," there should be an existing obligation for which the garnishee would be liable to the defendant in an action in the nature of assumpsit or debt. Thus in Fitch vs. Waite, 5 Conn., 117, 122, it was held that

"The moment of service, is the precise period, when a debt is attached; and if it be then existing, it is secured by the process; but if it does not then exist, no lien is created; as the operation
26 of an attachment, from its nature, is immediate, and not prospective. A future liability is not attachable, for the conclusive reason, that it is not a debt due."

To the same effect is Coburn vs. City of Hartford, 38 Conn., 290, where it was held that there must be an "existing debt" when the attachment is made although it might be payable in the future,

Again in Holcomb vs. Town of Winchester, 52 Conn. 447, it was held

"that the word 'debt' as used in the law of garnishment (as the process is elsewhere usually termed), includes only legal debts, or causes of action for which debt or assumpsit may be maintained."

Such also is Sand-Blast File Sharpening Co. vs. Parsons, 54 Conn. 310, 313, where the Court said that the word "due" as used in the foreign attachment statute imported an existing obligation and that where there is a condition precedent to the liability there is not existing indebtedness which can be garnishe-d.

Another instructive case is Cunningham Lumber Co. vs. N. Y., N. H. & H. R. R. Co., 77 Conn. 628. That was the case of a written contract for labor and materials which made no provision as to the time of payment and in which nothing was due until the contract was performed;—it was held that there was nothing to attach until the contract was performed.

And in the very recent case of Ransom vs. Bidwell, 89 Conn. 137, 140, there is a definite recognition of the principle that the obligation of the garnishee must be certain as to the liability to pay although the amount of the indebtedness is one which can be
27 fairly investigated and determined in an action of scire facias based upon the attachment already made.

In line with the precedents cited are Woodruff vs. Bacon, 35 Conn. 97; Candee vs. Skinner, 40 Conn. 464; Phœnix Insurance Co. vs. Carey, 80 Conn. 426, and Cox vs. Cronan, 82 Conn. 175, 176. The general conclusion of law to be drawn from these decisions is, that unless a garnishee (in the absence of an express contract to pay interest) has mingled the money attached in his hands with his own, he cannot be required to pay interest on it,—but if he has, the interest may be attached as an incident to the debt.

And this brings us to the vital question involved:—were these banks (in the absence of an express contract to pay interest) under legal obligation to pay these depositors interest on their deposits as an incident of the deposit, and was there any legal remedy open to the depositors at the time of the attachments to enforce such obligation? In my opinion each of these questions must be answered in the negative. Savings banks, as they exist in Connecticut, are held to be incorporated agencies of the depositors for their benefit, and a person making a deposit in a savings bank becomes substantially a part owner of all the assets of the bank. This was held in Osborn vs. Byrne, 43 Conn. 155, 160, where it was said that a savings bank is an incorporated agency for receiving and loaning money on account of the owners; it has no stock and no capital, and is merely a place of deposit where money can be left to remain or be taken out at the pleasure of the owner, and that

"the depositors in savings banks bear the same relation to each other and to the assets of the bank that stockholders in other mone-
28 tary institutions do to each other and to the property of the bank."

A like view of the subject is taken in Coite vs. Society for Savings, 32 Conn. 173; Bunnell vs. Collinsville Savings Society, 38 Conn., 203, and Price vs. Society for Savings, 64 Conn. 362, 366.

Interest was not due the depositors of the banks named as garnishees until declared,—either under their charters or the statutes of Connecticut limiting the rate of dividends payable to depositors,—Revision of 1902, Sections 3440, 3441, and 3442. These Sections which were enacted for the protection of depositors—Bank Commissioners vs. Watertown Savings Bank, 81 Conn. 261,—are as follows:—

"S. 3440. Dividends. The net income of any savings bank, in excess of one-eighth of one per cent. of its deposits, actually earned during the six months last preceding, and no more, may be semi-annually divided among its depositors. No dividend shall exceed a rate of four per cent. per annum, except as provided in S. 3441."

"S. 3441. Surplus. No savings bank shall make any dividend, except as provided in S. 3440, until its surplus shall have accumulated to an amount equal to three per cent. of its deposits. Such surplus shall be kept as a contingent fund; but no savings bank shall carry to its contingent fund more than ten per cent. of its deposits; and any surplus beyond that amount shall be divided among the depositors entitled to such dividends, in sums of not less than one per cent. of its deposits."

"S. 3442. Discrimination in Dividends. In declaring dividends the directors of savings banks shall have power to discrim-
29 inate between deposits of one thousand dollars or less, and those over that sum. Such discrimination shall not exceed one per cent. per annum, and if, at any time, a discrimination becomes necessary, it shall be made in favor of those deposits which are less than one thousand dollars."

This interest is in the nature of a dividend,—in fact it is a dividend and is expressly treated as such by the statutes quoted, and until declared in the way pointed out by the statutes (in the absence of a contract) it is not a debt which may be collected by legal proceedings in the nature of assumpsit or debt. The only remedy of a depositor for the unlawful neglect of the trustees of a savings bank to declare a dividend which had been earned would clearly seem, as in the case of a corporation with capital stock, to be an equitable proceeding to compel the trustees to declare a dividend, as distinct from and separate from the fund upon which it is declared, and until that is done it cannot and does not become the individual property of the depositor. This principle is clearly recognized in Lippitt vs. Thamas Loan & Trust Company, 88 Conn. 185,—the case of a receivership of a trust company with a savings bank department,—where in the course of the opinion at page 207, the court said,—

"As we understand the facts of this case, the several savings department depositors have not made their deposits upon a special contract to pay them a stated rate of interest. If our understanding be correct, the savings department depositors are not entitled to

interest or to dividends upon their deposits beyond the last declaration of dividend."

30 Clearly, in the light of the authorities cited, the attaching creditors acquired no more or greater rights than the depositors held at the time of the attachments. If, through defalcation or unfortunate investments or depreciation of securities, the assets of a savings bank become so impaired that the trustees could not legally declare the dividends, the depositors would share in the loss and would have no remedy either in law or equity to compel the payment of dividends,—authorities supra,—and if in such case they would be without a remedy, I fail to see how the attaching creditors acquire any rights by virtue of these attachments. The liability to pay the dividend was clearly subject to a condition precedent.

My conclusion therefore is,—that all interest accruing after the attachments belongs to the assignee by virtue of the assignments and not to the attaching creditors.

Let an order be drawn in accordance with this opinion.

31 *Bill of Exceptions.*

United States District Court, District of Connecticut, December Term, 1915.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff,

vs.

THE SAVINGS BANK OF DANBURY, Defendant.

NEW HAVEN, CONN., December 23rd, 1915.

Before Hon. Edwin S. Thomas, Judge.

Appearances:

For the plaintiff: Daniel Davenport, Esq., Bridgeport, Conn.; Walter Gordon Merritt, Esq., New York City.

For the Defendant, The Savings Bank of Danbury, J. Moss Ives, Esq., of Danbury, Conn.

For the United Hatters of North America: William F. Tammany, Esq., of South Norwalk, Conn., and Martin Cunningham, Esq., of Danbury, Conn.

32 Hearing on damages after default by defendant, The Savings Bank of Danbury. Subsequent to default and on motion of the defendant, notice was given to the United Hatters of North America, and said United Hatters of North America appeared and answered as on file.

Martin Fuchs, one of the original plaintiffs and a copartner in

the firm of D. E. Loewe & Co., having died and his death having been duly noted on the record, this action is continued by Dietrich E. Loewe as surviving partner of the firm of D. E. Loewe & Co.

Agreed Statement of Facts.

1. That the allegations of the paragraphs of the complaint numbered 1, 2, 3, 4, 5, 6 and 8 are true, and the allegations of paragraph 7 of the complaint are true except that the aggregate amount of the moneys so owned and possessed by the defendants as therein alleged was $18,461.54.

2. That the said sums of money so attached were savings bank deposits which the defendant held for the depositors under the terms of its charter which provided as follows:

"Sec. 3. All deposits of money received by said corporation shall be used and improved to the best advantage, by loaning the same, in a manner not inconsistent with the laws of this state; or by investing the same by purchase in bank stock or any other public stock of any state, and disposing of the same as the interest of said corporation may require; and the income or profits thereof shall be applied as dividends among the persons making the deposits, their executors and administrators, in just proportion, with such reasonable reduction as may be chargeable thereon. And the principal sums
33 of such deposits may be withdrawn by the owners thereof, or by any other person or persons duly authorized for that purpose, on giving notice of such intention in writing, and lodging the same with the secretary of said corporation at least four months previous to such withdrawal."

3. That after said writ was left in service and said attachment had been made, the United Hatters purchased the said attached estate from the original defendants named in Paragraph 1 of the complaint herein, whose estate had been so attached, and paid said defendants full value therefor, and said estate was duly transferred by said defendants to said United Hatters, and notice thereof was given to the defendant herein, and the said transferee thereupon became the equitable and bona fide owner of said estate, subject to the rights of the plaintiff acquired by virtue of said attachment.

4. That since said attachment, the defendant herein has, in accordance with the terms of its charter, used and improved the moneys so deposited with it, and has regularly declared dividends upon said several deposits payable from the income and profits earned by the defendant from these and its other deposits and that the aggregate amount of dividends so declared upon the several deposits levied upon by said writ of attachment is $11,278.13.

5. That subsequent to the commencement of this action, the defendant on June 26th, 1915, with the consent of the United Hatters paid to the plaintiff $17,558.37 and on July 8th, 1915, the further sum of $474.65 on account of the principal of said deposits so levied upon.

34 6. That there is still due and owing to the plaintiff on account of the principal of said attached deposits, the sum of $428.52.

Mr. Merritt: I ask your Honor to find that plaintiff is entitled to recover of the defendant the sum of $428.52, the amount of the principal of said attached deposits remaining unpaid.

The Court: I so find.

Mr. Merritt: I ask your Honor to rule and find as a conclusion of law, that the plaintiff is entitled to recover of the defendant the dividends or interest, amounting in all to $11,278.13, which accrued on said attached deposits subsequent to the attachment.

The Court: I decline to so find, but find on the contrary that the plaintiff is not entitled to recover said interest and dividends and that said interest and dividends are not covered by the attachment.

Mr. Merritt: We except to this ruling by your Honor.

Mr. Merritt: I ask your Honor to rule and find as a conclusion of law, that if the plaintiff is not entitled to recover said dividends declared by said Savings Bank upon said attached deposits, that he is entitled to recover 6% interest on said attached deposits from date of attachment, because said deposits have been mingled by the defendant with its own funds and the defendant has made profits thereon.

The Court: I decline to so rule, and find that the plaintiff is not entitled to recover interest on account of said attached deposits in any form.

Mr. Merritt: We except to your Honor's ruling.

35 Mr. Merritt: I ask your Honor to rule and find as a conclusion of law, that 6% interest from the date of the Marshal's demand on December 24th, 1912, should be allowed the plaintiff, such interest to be computed on the full amount credited to the attached estate on that date, including all interest or dividends to that date.

The Court: I refuse to so find.

Mr. Merritt: We except to your Honor's ruling and refusal to find.

Mr. Merritt: I ask your Honor to rule and find as a conclusion of law, that the plaintiff is entitled to recover 6% interest from the date of the Marshal's demand on December 24th, 1912, such interest to be computed upon the principal of the said attached estate as of the date of attachment.

The Court: I decline to so rule.

Mr. Merritt: We except to your Honor's ruling and refusal to find.

And now, in furtherance of justice and that right may be done, the plaintiff presents the foregoing as his bill of exceptions in this cause and prays that the same may be settled and allowed, and signed, sealed and certified by the Judge, as provided by law, and the Court does hereby sign and seal the same.

EDWIN S. THOMAS, *Judge.*

New Haven, Conn., Feb'y 22, 1916.

36 District Court of the United States for the District of Connecticut.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff,

vs.

THE SAVINGS BANK OF DANBURY, Defendant.

Petition for Writ of Error and Order Allowing the Same.

Now comes the plaintiff in the above-entitled cause, Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., and says that on or about the 22nd day of February, 1916, final judgment was rendered against the defendant and in favor of the plaintiff herein, to recover of the defendant the sum of Four hundred twenty-eight and 52/100th dollars ($428.52), and his costs and disbursements taxed and allowed at the further sum of — dollars and — cents ($—).

That in said judgment and the proceedings herein had prior thereto in this cause, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which are on file with this petition.

Therefore, the plaintiff prays an order of this Court allow-
37 ing this plaintiff to prosecute a writ of error to the Honorable United States Circuit Court of Appeals, for the Second Circuit, and that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Second Circuit, for the correction of errors so complained of and in accordance with the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Second Circuit.

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Attorneys for Plaintiff.

It is ordered that the writ of error above prayed for be allowed this 24th day of February, 1916.

EDWIN S. THOMAS,
United States District Judge.

Endorsed: Filed 24th Feb., 1916. Charles Elliott Pickett, Clerk.

38 District Court of the United States for the District of Connecticut.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff,

vs.

THE SAVINGS BANK OF DANBURY, Defendant.

Assignment of Errors and Prayer for Reversal.

Simultaneously with the filing of his petition for a writ of error, the plaintiff herewith files the following assignment of errors which he avers occurred upon the trial of this action and in the rendition of judgment therein:

1. That the Court erred in refusing to rule that the plaintiff was entitled to recover of the defendant the dividends or interest, amounting in all to $11,278.13 which accrued on the attached bank deposits subsequent to the attachment.

2. That the Court erred in refusing to rule that the plaintiff was entitled to recover six per cent. interest on the attached bank accounts from the date of attachment.

3. That the Court erred in refusing to rule that the plain-
39 tiff was entitled to recover six per cent. interest on said attached bank accounts from the date of the Marshal's demand on December 24th, 1912.

4. That the Court erred in refusing to rule that the plaintiff was entitled to recover six per cent. interest on the attached bank accounts from the date of the Marshal's demand on December 24th, 1912, such interest to be computed upon the principal of the said attached estate as of the date of attachment.

5. That the Court erred in refusing to allow the plaintiff interest in any form on said attached bank accounts.

6. That the Court erred in refusing to allow interest on said attached accounts in the judgment herein.

Wherefore, the plaintiff in error prays that the judgment herein be reversed and that judgment be directed in favor of the plaintiff in error against the defendant in error for the amount of the principal of said attached bank accounts remaining unpaid, and interest on all of the attached bank accounts from the date of attachment.

Dated, New York, February 24th, 1916.

DANIEL DAVENPORT,
WALTER GORDON MERRITT,
Attorneys for Plaintiff.

Endorsed: Filed 24th Feb., 1916. Charles Elliott Pickett, Clerk.

40 *Allowance of Writ of Error.*

District Court of the United States for the District of Connecticut.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff,

vs.

THE SAVINGS BANK OF DANBURY, Defendant.

On this 24th day of February, 1916, came the plaintiff, Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., by his attorneys, Daniel Davenport and Walter Gordon Merritt, and filed herein and presented to the Court his petition for the allowance of a writ of error, together with an assignment of errors intended by him to be urged, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit, and that such other and further proceedings may be had as may be proper in the premises.

Now, in consideration thereof and upon the stipulation of the defendant annexed hereto which waives the giving of any bond upon this writ of error, the Court does allow the writ of error.

EDWIN S. THOMAS,
U. S. D. J.

Endorsed: Filed 24th Feb., 1916. Charles Elliott Pickett, Clerk.

41 *Stipulation.*

District Court of the United States for the District of Connecticut.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff,

vs.

THE SAVINGS BANK OF DANBURY, Defendant.

It is hereby stipulated and agreed that the writ of error in the above-entitled action may be prosecuted by the plaintiff without furnishing a bond, and that the plaintiff need furnish no bond for costs.

WALTER GORDON MERRITT,
Attorney for Plaintiff.

J. MOSS IVES,
Attorney for Defendant.

Citation on Writ of Error.

By the Hon. Edwin S. Thomas, Judge of the District Court of the United States for the District of Connecticut, in the Second Circuit, to the Savings Bank of Danbury, Greeting:

You are hereby cited and admonished to be and appear
42 before the United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the Circuit above stated, on the ninth day of March, 1916, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States, for the District of Connecticut, wherein Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., is plaintiff, and you are defendant, to show cause, if any there be, why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the City of New Haven, in the District of Connecticut, and the Second Circuit, this 24th day of February, in the year of our Lord, one thousand nine hundred and sixteen and of the Independence of the United States the One hundred and fortieth.

EDWIN S. THOMAS,
Judge of the District Court of the United States for the District of Connecticut, in the Second Circuit.

Due and lawful service of the foregoing citation is hereby acknowledged and accepted.

J. MOSS IVES,
Attorney for Defendant.
WILLIAM F. TAMMANY,
Attorney for United Hatters of North America.

Endorsed: Filed 24th Feb., 1916. Charles Elliott Pickett, Clerk.

43 *Stipulation.*

District Court of the United States for the District of Connecticut.

No. 1807. Law.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff,
vs.
THE SAVINGS BANK OF DANBURY, Defendant.

It is hereby stipulated, that the foregoing is a true and correct transcript of the writ and complaint, appearance, default, motion to cite in United Hatters of North America, and for hearing on dam-

ages, order, answer of United Hatters of North America, judgment, bill of exceptions, papers on writ of error, and the opinion of the Trial Court, and of the whole thereof, made up to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on writ of error of the plaintiff in the above-entitled action, and certification thereof by the Clerk of the District Court is hereby waived.

And it is consented that these papers may be filed and used herein as the transcript of the record on error in the above-entitled action.

Dated, Danbury, Conn., March —, 1916.

WALTER GORDON MERRITT,
Attorney for Plaintiff in Error.
J. MOSS IVES,
Attorney for Defendant in Error.
WILLIAM F. TAMMANY,
Attorney for United Hatters of North America.

44 *Clerk's Certificate to Record.*

UNITED STATES OF AMERICA,
District of Connecticut, City of Hartford, ss:

I, Charles E. Pickett, Clerk of the District Court of the United States of America, for the District of Connecticut, for the Second Circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing is a correct transcript of the record and proceedings had in said Court in the cause of Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., Plaintiff-in-Error, versus The Savings Bank of Danbury, Defendant-in-Error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereto fixed at the City of Hartford, in the District of Connecticut, in the Second Circuit, this 8th day of March, in the year of our Lord, One thousand nine hundred and sixteen, and of the Independence of the United States the One hundred and fortieth.

[L. S.] CHARLES E. PICKETT, *Clerk.*

45 United States Circuit Court of Appeals for the Second Circuit.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. LOEWE & COMPANY, Plaintiff in Error,
against
THE SAVINGS BANK OF DANBURY, Defendant in Error.

Before Coxe and Rogers, Circuit Judges, and Augustus N. Hand, District Judge.

Daniel Davenport, Walter Gordon Merritt, Attorneys for Plaintiff-in-Error;
John H. Light, John R. Booth, J. Moss Ives, Attorneys for Defendant-in-Error.

This cause comes here on writ of error to the District Court of the United States for the District of Connecticut.

ROGERS, *Circuit Judge:*

An action was commenced by the present plaintiff and others in the Circuit Court of the United States for the District of Connecticut thirteen years ago to recover damages from the members of a trade union charged with conspiracy in restraint of interstate commerce. The questions involved were before that court at various times,
46 and were before this court on several occasions, and were three times before the Supreme Court of the United States. The plaintiffs were manufacturers of hats at Danbury, Connecticut, where they maintained a factory. The defendants in the original suit were members of a combination called The United Hatters of North America and they were charged with being in a conspiracy to compel the plaintiffs to unionize their factory. The Supreme Court in Loewe v. Lawler, 208 U. S. 274 (1907) sustained the right to maintain the action. In 1912 the Supreme Court refused a writ of certiorari, and in 235 U. S. 522 (1915) that court affirming the decision of this court in 209 Fed. 721 (1913) sustained a judgment rendered against the defendants in that action in the sum of $353,130.90.

When the action above referred to, known as the Danbury Hatters' case, was commenced a writ of attachment was issued dated August 31, 1903, demanding $240,000 damages and costs. The writ directed the United States marshal for the District of Connecticut to attach to the value of $250,000 the goods and estate of over 150 named defendants and it was duly served upon them and upon the Savings Bank of Danbury, defendant herein, "as agent, trustee and debtor of and to each of the aforesaid persons named therein as defendants."

The process under which the money deposited in the Savings Bank was attached was issued under section 880 of the General Statutes of Connecticut, Revision of 1902, which reads as follows:

"When the effects of the defendant, in any civil action in which judgment or decree for the payment of money may be rendered, are concealed in the hands of his agent or trustee so that they cannot be

found or attached, or where a debt is due from any person to such defendant, or where any debt, legacy or distributive share is, or may become due to such defendant from the estate of any deceased
47 person or insolvent debtor, the plaintiff may insert in his writ, a direction to the officer to leave a true and attested copy thereof, and of the accompanying complaint, at least twelve days before the session of the court to which it is returnable, with such agent, trustee or debtor of the defendant, or as the case may be, with the executor, administrator or trustee of such estate, or at the usual place of abode of such garnishee and from the time of leaving such copy, all the effects of the defendant in the hands of any such garnishee, and any debt due from any such garnishee, to the defendant, and any debt, legacy or distributive share, due or that may become due to him from such executor, administrator or trustee in insolvency, not exempt from execution, shall be secured in the hands of such garnishee to pay such judgment as the plaintiff may recover."

When the judgment was obtained in the main action an execution was taken out and put into the hands of the marshal, who acting by the direction of the plaintiffs, made demand upon the Savings Bank of Danbury, the defendant herein, as agent, trustee and debtor of and to each of the judgment debtors severally of the sums named in the execution and of any estate of each of the several judgment debtors severally. This demand the Savings Bank refused to comply with, although at the time it was served it was indebted to each of the defendants severally in various amounts which it refused at the time to disclose. At the time the marshal made his demand the Savings Bank had on deposit $18,461.54 to the credit of various of the defendants. The execution was returned wholly unsatisfied.

An action in scire facias was then brought pursuant to section 931 of the General Statutes of Connecticut, Revision of 1902, to recover attached Savings Bank accounts levied upon by the writ of attachment above mentioned. Section 931 reads as follows:

"If judgment be rendered in favor of the plaintiff in any action by foreign attachment all the effects in the hands of the garnishee at the time of the attachment or debts then due from him to the defendant, and any debt, legacy, or distributive share, due or
48 to become due to the defendant from any garnishee as an executor, administrator or trustee, shall be liable for the payment of such judgment; and the plaintiff, on praying out an execution, may direct the officer serving the same, to make demand of such garnishee for the effects of the defendant in his hands, and for the payment of any debt due to the defendant, and such garnishee shall pay said debt or produce said effects, to be taken and applied on said execution; and if he shall have in any manner disposed of the effects of the principal in his hands when the copy of the writ was left with him, or shall not expose or subject them to be taken on the execution, or shall not pay to the officer, when demanded, the debt due to the defendant at the time the copy of the writ was left with him, such garnishee shall be liable to satisfy such judgment out of his own estate, as his proper debt, if the effects or debt be of sufficient value or amount, if not, then to the value of such effects or to the amount of such debt. A scire facias may be taken

out from the clerk of the court where judgment was rendered to be served upon such garnishee, requiring him to appear before such court and show cause, if he have any, to the contrary; and the plaintiff may require the defendant, and the defendant shall have the right to disclose, on oath, whether he had any of the effects of the debtor in his hands, or is indebted to him; and the parties may introduce any other proper testimony respecting such effects. If it be found that the defendant has the effects of such debtor in his hands, or is indebted to him, or if he makes default of appearance, or refuses to disclose on oath, judgment shall be rendered against him as for his own debt to be paid out of his own estate, with costs; but if it appear on the trial, that the effects are of less value, or the debt of less amount than the judgment recovered against the debtor, judgment shall be rendered to the value of the goods or to the amount of the debt; and if it appears that the defendant has no effects of such debtor in his hands, or is not indebted to him, he shall recover costs."

And Congress in 1872 provided as follows:

"In common law causes in the circuit and district courts the plaintiff shall be entitled to similar remedies by attachment or other process, against the property of the defendant, which are now provided by the laws of the State in which such court is held for the courts thereof; and such circuit or district courts may, from time to time, by general rules, adopt such State laws as may be in force in the States where they are held in relation to attachments and other process; Provided, That similar preliminary affidavits or proofs and similar security, as required by such State laws, shall be first furnished by the party seeking such attachment or other remedy."

No question has been raised but that the action is one which the plaintiff is entitled to bring under the law of Connecticut and of the United States.

49 It appears that in December 1903, after the attachment of the deposits in the Savings Bank and before the rendition of final judgment in the original action, the defendants in that action assigned to the United Hatters of North America, a voluntary association having an office or principal place of business in the City and State of New York, the dividends or interest accruing on said deposits and which were declared after the attachment.

The United Hatters of North America was given notice of the pendency of the proceedings according to the terms of the Connecticut statute under which the proceeding was instituted, and it appeared and filed an answer in which it alleged that the dividends or interest accruing and declared subsequent to the original attachment were not held by the attachment but passed to it and became its property by virtue of the assignments. The United Hatters notified the Savings Bank that it claimed to own the dividends declared or the interest due on such accounts and demanded payment of the same which payment was refused.

It is admitted that at the time of the attachment the amount held in the Savings Bank account to the credit of the various defendants in the original action amounted to $18,461.54. And the District Judge has found that subsequent to the commencement of the pres-

ent proceeding the defendant with the consent of The United Hatters paid to the plaintiff $17,558.37, on June 26, 1915, and the further sum of $474.65 on account of the principal of said deposits.

The important question involved is whether the interest or dividends which have accumulated in the hands of the defendant and which would belong to the depositors but for the assignment, belong to the judgment creditor by virtue of the original attachment, or to the assignee of the fund by virtue of the assignment made after the attachment.

It is understood that similar actions are pending, brought by the plaintiff against other savings banks in Connecticut, involving the same issue and that the parties have stipulated that the judgment in those actions is to be controlled by the decision in this suit. The accumulated dividends on the various deposits in the various actions are said to amount to about $20,000.

The District Judge came to the conclusion that the attaching creditor was not entitled to the interest or dividends but that the same belonged to the United Hatters as assignee. He accordingly gave judgment to the plaintiff in the sum of $428.52 that being the amount of the principal which it is admitted remained unpaid in the hands of the Savings Bank of Danbury, the defendant in the action.

The attachments of the deposits in the Savings Bank was a proceeding unknown to the common law. In Haber v. Nassitts, 12 Fla. 589, 608, the Supreme Court of Florida declares that:

"No such process was known at common law and the proceeding is traced to a custom of London whereby 'if a plaint was affirmed and returned nihil,' the plaintiff had a garnishment against debtors of the defendant, and after certain proceedings was entitled to judgment."

However that may be the remedy by attachment in this country owes its existence entirely to statutory enactment. In Penoyer v. Kelsey, 150 N. Y. 77 (1896), the New York Court of Appeals in speaking of the remedy by attachment says: "It exists, as a provisional remedy, only when authorized by statute, and as such is comparatively recent in its origin." And see Ganse v. Cone, 73 Texas 241 (1889); Hubbell v. Kingman, 52 Conn. 19 (1884); Kittredge v. Bellows, 7 N. H. 399; Baldwin v. Flagg, 43 N. J. L. 495. But in Mack v. Parks, 74 Mass. 517 (1857) the court said:

"Our system of attachment on mesne process was derived from the ancient rule of the common law, by which as part of the service of civil process, goods which were properly subject to distress were allowed also to be taken by a species of distress, and held as vadii or pledges to compel the appearance of the defendant."

And as the remedy by attachment is statutory the rights of an attaching creditor are governed by the state law as declared by the highest court of the state enacting the statute, and the decisions of that court will be followed by a court of the United States having jurisdiction of the proceedings. Wolf v. Cook, 40 Fed. 432 (1889); Rice v. Alder-Goldman Commission Co., 71 Fed. 151 (1895); L.

Bucki & Son Lumber Co. v. Fidelity & Deposit Company of Maryland, 109 Fed. 393 (1901).

As the remedy by attachment is regarded as being in derogation of the common law the courts have sometimes construed strictly the statutes giving the remedy. Ritchie v. Sayers, 100 Fed. 520; Grigham v. Avery, 48 Vermont 602; Penoyer v. Kelsey, supra. But in a number of the states the statutes themselves expressly provide that they are not to be strictly construed. See C. J. 37. In other states the courts having regard to the intention of the legislatures, have been inclined to adopt a liberal construction independently of express statutory provision. Hannibal &c. R. Co. v. Crane, 102 Ill. 249; Gunby v. Porter, 80 Md. 402; Best v. British &c. Co. 128 N. C. 351; Stock v. Little, 45 Pa. 416; Cole v. Utah Sugar Co., 35 Utah 148. The Connecticut statute once construed strictly, Hubbell v. Kingman, supra, is now liberally construed, Ransom v. Bidwell, 89 Conn. 137 (1915). The policy of the State of Connecticut is declared by its highest court in the above case to be that:

"All the property of a debtor not exempt from execution shall be made subject to the payment of his debts, and that every facility consistent with the reasonable immunity of the debtor should be afforded to subject such property to legal process."

52 Under such statutes as that in Connecticut it is of course not questioned but that a creditor of a depositor in a Savings Bank can attach the deposit. A bank is bound to respect such process and the courts do not permit it to apply the fund attached to the payment of any debt due from the depositor to any one. Bolles on Modern Law of Banking, volume 2, page 778. The difficulty arises when the fund so deposited is upon interest and it becomes necessary to determine whether the attachment binds interest thereafter accruing. The District Judge thought it did not. He fully recognized the principle that the question should be governed by the decisions of the Connecticut court so far as those decisions throw light upon the subject. He reviewed at some length the decisions in that State. There are a number of cases in which the Connecticut court has decided that attaching creditors acquire no more or greater rights than the depositors had at the time of the attachments, and he therefore concluded that all interest accruing after the attachment belonged to the assignee by virtue of the assignment and not to the attaching creditors.

But the exact question presented in this action has never been presented to the Supreme Court of the State of Connecticut. That court has held that under the foreign attachment statute of that State there is no right to attach unless there is an existing obligation or debt due, and that where there is a condition precedent to the liability there is not an existing indebtedness which can be garnisheed. See Fitch v. Eaite, 5 Conn. 117 (1823); Coburn v. City of Hartford, 38 Conn. 290 (1871); Holcomb v. Town of Winchester, 52 Conn. 447 (1883); Sand-Blast File-Sharpen-

53 ing Co. v. Parsons, 54 Conn. 310 (1886); Cunningham Lumber Co. v. N. Y., N. H. & H. R. R. Co., 77 Conn. 628 (1905). These decisions, however, are not conclusive of the question involved in the present action. Not only is the question one

upon which the Connecticut courts have not passed, but it is one upon which there seems to be little authority. While it is true that under the Connecticut decisions it is the existing obligation or the debt due which is bound by the attachment, and that at the time the attachment was served the dividends in question had not been declared and were not in existence, nevertheless they would be subject to the attachment if they are to be considered a necessary incident of the deposits. For whatever binds the principal binds that which is inseparable from the principal. An attachment of a freehold, for example, would give a lien on the timber trees and on the buildings attached thereto. In Coke on Littleton, 151 *b*, it is said that a thing is "incident to another when it appertains to, or follows on that other which is more worthy or principal." The lexicographers say that an "incident" is a thing that is necessarily or inseparately connected with another. That it is something characteristically, naturally, or legally depending upon, connected with or contained in another thing as its principal. Webster says that it is something necessarily appertaining to or depending on another, which is termed the principal. So that the question is whether the "dividends" on these deposits so appertained to and were so connected with the latter that the attachment of the deposits created a lien on the deposits and the dividends including those subsequently declared. In Shinn on Attachment and
54 Garnishment (1896) volume 1, section 316, pages 609, 610, that writer says:

"Whether or not the rents and profits accruing upon the attached property are subject to the attachment lien cannot be said to be judicially ascertained."

In Cook on Corporations, 7th edition, (1913) volume 2, section 484, page 1359, that writer says that: "Dividends on the stock which is attached follow the stock and are covered by the attachment."

In Jacobus v. Monongahela National Bank, 35 Fed. 395 (1888), a case in a United States District Court, a creditor attached shares of stock in a railroad company, the shares standing in the name of Jacobus, and when the railroad company and Jacobus were summoned as garnishees, Jacobus pleaded nulla bona and the railroad company pleaded that the stock belonged to Jacobus. The original case was decided in 1883 by the Supreme Court of the United States (109 U. S. 275) in favor of the garnishees. It appears that at the time the attachment was served, the railroad company had in its hands a dividend of $264 on said stock, and from time to time thereafter twenty-one other dividends of $264 each were declared and all said dividends were retained by said railroad company until the decision by the Supreme Court, when the railroad company paid the money to Jacobus without interest. Suit was then brought on the recognizance furnished by the bank to pay damages caused by the attachment, and the question arose as to whether the attachment compelled the railroad company to withhold the payment of subsequent dividends. The court held that the attaching creditor was entitled to the dividends and said:

"The dividends were but an incident to the stock—the mere fruits thereof—and were as much within the grasp of the attachment as the corpus of the stock was."

55 In Moore v. Gennett, 2 Tenn. Ch. 375 (1875) Chancellor Cooper in an attachment case said that:

"Dividends are as much an incident to the stock as rent is to the reversion of land, or interest to a debt."

He added:

"Besides, the increase or income of property, after the levy of an attachment, is given to the creditor by the Code, section 3536."

The connection clearly shows that in his opinion the provision of the Code was merely declaratory of what the law would have been without the Code.

In Syracuse City Bank v. Coville, 19 How, Pr. (N. Y.) 385 (1860) the court held that where an attachment issued and was levied on a money bond payable in installments and at the time only one installment was due, the creditor only acquired a lien on the amount actually due upon the bond at the time of service of the writ. The case is distinguishable from the case of Jacobus v. Monongahela National Bank, supra, and is not to be regarded as controverting it in the least. What was attached in the Syracuse City Bank case was the debt due at the time of the levy. The debts due on the subsequent installments were not incidents of the debt attached but were wholly independent thereof.

In the case under consideration the property attached was not stock but deposits in the Savings Bank. Now a savings bank is conducted solely for the benefit of its depositors. It receives deposits and loans them for their benefit. And a Savings Bank is conducted solely for the benefit of the depositors and in which the profits after deducting necessary expenses inure wholly to the benefit of the depositors, does not stand in the relation of a debtor to a creditor as does an ordinary bank to its depositors. Its re-

56 lation is more nearly that of trustee and cestui que trust. State v. People's National Bank, 75 N. H. 27. The depositors intrust their money to the bank as their trustee to keep and invest the same according to the charter and the laws. If there is a profit they receive it, if there is a loss they share it according to the amount of their deposits. In Cary v. Savings Union, 22 Wall. 38 (1874), the Supreme Court held that the share of profits paid by a Savings bank to its depositors constituted "dividends". Chief Justice Fuller wrote the opinion in the course of which he said:

"The interest received for the loan of each deposit was not kept by itself, and paid to the depositors after deducting a charge to cover expenses, but all was placed in a common fund, and when the net result of the business was ascertained, that was divided among the several contributors according to the value of their contributions. Such a division clearly produces a dividend according to the understanding of that term."

The question in the case was whether the share of the profits paid a depositor was to be considered as "interest" or as "dividends".

But that was a case where the Savings bank had a capital stock and a reserve fund and under its charter the directors at the expiration of every six months after deducting certain salaries and expenses, would set apart a certain proportion of the profits, not exceeding one-tenth, to the stockholders as a compensation for furnishing the capital. "Although a bank may be called a savings bank, if it is really a stockholders' bank, where the capital is owned by the shareholders, the name will amount to nothing," as said in 2 Morse, section 618. The mere designation of a bank as a savings bank does not make it one. To determine its true character, its organization, powers and mode of doing business must be considered. 3 R. C. L. page 694. And the record in this case does not
57 disclose the organization, powers and mode of doing business of the Danbury Savings Bank. We do not know whether it had a capital stock or not. If it did not have but held the deposits as a trustee and not as a debtor, the plaintiff could still attach them. The law is clear that if a trustee has funds in his hands belonging to the cestui que trust they are liable to foreign attachment. Easterly v. Keney, 36 Conn. 18 (1869). Whether the income funds so held produce "dividends" in a technical sense is not important to the decision of this case, such income being, in our opinion, an incident of the deposits in either case.

The matter may be considered from another view point. In Mattingly v. Boyd, 20 How. 128 (1857) the Supreme Court said that:

"As a general rule, a garnishee is not bound to pay interest, because he is liable to be called on to pay at all times. (11 Sargent & Rawle 188; Drake Pr. 725; 1 Washington V. R. 149)."

Undoubtedly what the court referred to was not the interest due from a debtor to a creditor at the time of the service of the process, but interest on the money thereafter. And in that case while acknowledging the general rule to be as stated the garnishee was charged with interest from the time when the attachment process was served for the reason that he had used the money, and interest was charged from October 23, 1827 when process was served to August 25, 1851.

In Woodruff v. Bacon, 35 Conn. 97 (1868) the Supreme Court of Connecticut applied the same principle to a case in which the garnishee had used the fund. The court said:

"But we cannot recognize the principle that should allow the the plaintiffs to recover the debt and not allow them to recover the interest which is the mere incident to the debt arising from the defendant's use of it."

So in Cox v. Cronan, 82 Conn. 176 (1909) the same court said:

58 "When money belonging to a defendant is attached in the hands of a third party by process of foreign attachment, the garnishee cannot safely pay it over to either party pending the continuance of the suit in which it is attached, but must hold it to abide the result of the action. If he is not under contract to pay interest, and makes no use of the money, but retains it as a

mere stakeholder, he will not be liable for interest until the result of the suit determines to which party he shall pay it. Candee v. Skinner, 40 Conn. 464; Phœnix Ins. Co. v. Carey, 80 Id. 426, 432; 68 Atl. 993. But when he mingles the money attached with his own and has the use of it, he is liable for the interest on it."

In American & English Encyclopedia of Law, 837, 838, the rule is laid down as follows:

"It is well settled that a garnishee is liable to the plaintiff for interest on the amount of his indebtedness to the defendant during the pending of the garnishment proceedings if he had promised the defendant to pay interest or if he received interest or used the money during that time."

In 22 Cyc. 1559, 1560, the rule is stated as follows:

"Attachment or Garnishment.—(1) In General. Where interest upon a debt is recoverable as damages, and not by reason of a contract to pay it, the debtor is not usually liable for interest during a period in which he is prevented from making payment by reason of the debt being attached or garnished in his hand by some third person, or by the debtor being summoned as a trustee of the creditor under trustee process. But if the contract on which the debt is founded draws interest during the time payment is thus delayed interest will not be suspended. If a debtor against whom trustee or garnishment proceedings are issued causes unreasonable delay in making his answer thereto or otherwise for the purpose of obtaining a longer use of the money, or falsely denies his indebtedness, he will be liable for interest during the pendency of the proceedings. (II) Use of funds by garnishee. If a garnishee, during the pendency of the proceedings, employes the funds in his hands so as to derive a profit therefrom, he will generally be held to account for interest."

In Bassett v. Kinney, 24 Conn. 267 (1855) the court held that a person to whom money is intrusted to be paid over to a designated recipient, and who deposits the money in bank for some time, afterward paying it over to the person entitled to receive it, is liable to such person for the interest paid to him, on the money
59 while deposited in the bank, although such interest is paid after the money has been turned over. Where it affirmatively appears that the funds have been profitably employed and the principle has been augmented by virtue of such profitable employment, the principle and the increment are inseparable and belong to the attaching creditor. If the attached fund, in this case the deposits, produces earnings during the period of the attachment, those earnings are an incident of the attached fund and subject to the lien. It makes no difference by what name the earnings may be called, whether interest or dividends. As long as the attached fund is used for profit, the profit whether earned for the benefit of the garnishee or the debtor, is impounded for the benefit of the attaching creditor and is subject to the same ultimate disposition as the principal of which it is the incident. Is it said that in this case the Savings Bank was not using the funds for its own benefit but for the benefit of the depositors? But surely that can-

not help the case for if the argument be sound then this extraordinary result would follow—that a person garnisheed could not use the attached funds for his own benefit without being chargeable with interest, but he could use them for the benefit of the debtor defendant who is being pursued by the attaching creditor and if he did the defendant and not the attaching creditor would be entitled to the accumulated interest. A principle leading to such an unjust and irrational result cannot be sound and need not be further considered.

That the deposits attached were used and earned a profit during the period of litigation is conceded. The court below made the following finding of fact which was embodied in the judgment.

60 "That since that attachment, the defendant herein has, in accordance with the terms of its charter, used and improved the moneys so deposited with it and has regularly declared dividends upon said several deposits payable from the income and profits earned by the defendant from these and its other deposits, and that the aggregate amount of dividends so declared upon the several deposits, levied upon by said writ of attachment, is $11,278.13."

The plaintiff contends that he is entitled to recover six per cent interest from the date of the demand made by the marshal after final judgment on December 24, 1912. The General Statutes of Connecticut, Revision of 1902, section 3440, provide that the net income of Savings banks in excess of one-eighth of one per cent of its deposits, actually earned during the six months last preceding, and no more, may be semi-annually divided among its depositors. It is then added that no dividend shall exceed a rate of four per cent per annum except as provided in section 3441. The plaintiff's claim to six per cent does not rest upon anything in that section, but upon the principle that the refusal to comply with the marshal's demand was wrongful and when one wrongfully withholds money he is chargeable with the legal rate of interest, which in Connecticut is six per cent. At the time the marshal made his demand the interest or dividends were claimed by the United Hatters of North America under the assignment, and the proceeding now under review was instituted to determine the rights of the respective parties. A withholding by the defendant under such circumstances cannot be regarded as unlawful and the interest to be allowed must be limited to the Savings bank rate.

The judgment below must be modified so as to include the dividends declared by the defendant according to law. Those

61 dividends the plaintiff is entitled to recover in addition to the balance of the deposits $428.52, and his costs in both courts.

The judgment so modified is affirmed.

(Endorsed:) United States Circuit Court of Appeals, Second Circuit. Dietrich E. Loewe against The Savings Bank of Danbury. Opinion Rogers, C. J. United States Circuit Court of Appeals, Second Circuit. Filed July 5, 1916. William Parkin, clerk.

62 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the Court-rooms in the Post-office Building in the City of New York, on the 13th day of July, one thousand nine hundred and sixteen.

Present:

Hon. Alfred C. Coxe,
Hon. Henry Wade Rogers,
Circuit Judges;
Augustus N. Hand, District Judge.

DIETRICH E. LOEWE, as Surviving Partner, etc., Plaintiff in Error,
v.
SAVINGS BANK OF DANBURY, Defendant in Error.

Error to the District Court of the United States for the District of Connecticut.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of Connecticut, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is modified in accordance with the opinion of this court
H. W. R. and as so modified is affirmed with costs to the plaintiff in error in both courts.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

63 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. D. E. Loewe vs. Savings Bank of Danbury. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed July 13, 1916. William Parkin, Clerk.

64 In the United States Circuit Court of Appeals for the Second Circuit.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Co., Plaintiff in Error,
against
THE SAVINGS BANK OF DANBURY, Defendant in Error.

Petition for Writ of Error and Order Allowing Writ.

Now comes the defendant in error in the above entitled cause, The Savings Bank of Danbury, and respectfully shows that a final judgment has been rendered in the above entitled cause by the United States Circuit Court of Appeals for the Second Circuit, on the 5th day of July, 1916, modifying and affirming the judgment of the District Court of the United States for the District of Connecticut

and that the matter in controversy in said suit exceeds $5,000, exclusive of costs and that the jurisdiction of none of the courts above mentioned is or was dependent in any wise upon the diversity of citizenship or upon any of the parties being aliens or citizens of different states and this cause does not arise under the Patent Laws, nor the Revenue Laws, nor the Criminal Laws and that it is not an admiralty case and that it necessarily involves the construction and legal effect of a writ of attachment or garnishment issued out of the District Court of the United States for the District of Connecticut, pursuant to the Statutes of the United States in such cases made and provided, and that it is a proper case to be reviewed by the Supreme Court of the United States upon writ of error.

65 That in said judgment as modified by said Circuit Court of Appeals and the previous proceedings had herein, certain errors were committed to the prejudice of the defendant in error, all of which will more in detail appear from the assignment of errors which are on file with this petition.

Therefore the defendant prays an order of this court allowing it to prosecute a writ of error to the Supreme Court of the United States and that a writ of error may issue in this behalf for the correction of the errors so complained of and in accordance with the Laws of the United States in such cases made and provided and that a transcript of the record proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States and that an order be made herein fixing the amount of security which the defendant shall give and furnish upon said writ of error and upon the giving of such security, all further proceedings in this court be suspended and stayed until the determination of said writ of error in the said Supreme Court of the United States and your petitioner will ever pray.

J. MOSS IVES,
Attorney for Defendant in Error.

It is hereby ordered that the writ of error above prayed for be allowed this 10th day of August, 1916.

ALFRED C. COXE,
Judge of the Circuit Court of Appeals for the Second Circuit.

66 (Endorsed:) United States Circuit Court of Appeals for the Second Circuit. Dietrich E. Loewe, etc., Plaintiff-in-Error, vs. Savings Bank of Danbury. Petition for writ of Error and Order allowing writ. J. Moss Ives, Danbury, Conn., Attorney for Defendant-in-Error. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 11, 1916. William Parkin, Clerk.

67 United States Circuit Court of Appeals for the Second Circuit.

DIETRICH E. LOEWE, as Surviving Partner of the Firm of D. E. Loewe & Company, Plaintiff in Error,

vs.

SAVINGS BANK OF DANBURY, Defendant in Error.

Assignment of Errors and Prayer for Reversal.

Simultaneously with the filing of its petition for a writ of error, the defendant-in-error, the Savings Bank of Danbury, herewith files the following assignment of errors which it avers occurred on the trial of this action and in the rendition of the judgment therein:

1. That the Court erred in holding that the plaintiff-in-error, Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Company, was entitled to recover of the defendant-in-error the interest or dividends, amounting in all to $11,278.13, which accrued on the attached bank accounts subsequent to the attachment or garnishment.

2. That the judgment as modified and affirmed by the United States Circuit Court of Appeals for the Second Circuit, is erroneous in that it awards the plaintiff-in-error, Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Company, the interest or dividends which accrued on the attached bank accounts subsequent to the date of garnishment or attachment.

68 3. That the United States Circuit Court of Appeals for the Second Circuit erred in modifying and affirming the judgment of the District Court so that it adjudged that the plaintiff-in-error, Dietrich E. Loewe, etc., recover of the defendant-in-error, the Savings Bank of Danbury, the interest or dividends which accrued subsequent to the date of attachment or garnishment.

Wherefore, the defendant-in-error, the Savings Bank of Danbury, prays that the judgment herein as modified by the United States Circuit Court of Appeals be modified so that it adjudge that the plaintiff-in-error, Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Company, is not entitled to recover the accrued interest or dividends on said attached bank accounts, and only recover of the defendant-in-error, the Savings Bank of Danbury, the sum of Four hundred twenty-eight and 52/100 dollars ($428.52), and his costs, and that said judgment as entered by the United States District Court for the District of Connecticut, be restored in the form in which it was entered before it was modified and affirmed by the said United States Circuit Court of Appeals.

Dated, Danbury, August 7th, 1916.

J. MOSS IVES,
Attorney for Defendant in Error,
The Savings Bank of Danbury.

69 (Endorsed:) United States Circuit Court of Appeals for the Second Circuit. Dietrich E. Loewe, etc., Plaintiff-in-Error, vs. Savings Bank of Danbury, Defendant-in-Error. Assign-

ment of Errors and Prayer for Reversal. J. Moss Ives, Danbury, Conn., Attorney for Defendant-in-Error. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 11, 1916. William Parkin, Clerk.

70 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 69 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Dietrich E. Loewe, etc., against Savings Bank of Danbury as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of August in the year of our Lord One Thousand Nine Hundred and sixteen and of the Independence of the said United States the One Hundred and forty-first.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 9/11/16. Wm. P.]

71 *Citation.*

The United States Circuit Court of Appeals, Second Circuit.

UNITED STATES OF AMERICA, *ss:*

To Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co., of the Town of Danbury, Fairfield County, Connecticut, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the United States Circuit Court of Appeals for the Second Circuit, wherein you are plaintiff in error and The Savings Bank of Danbury, of Danbury, Connecticut, is defendant in error to show cause, if any there be, why the judgment rendered against the said defendant in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated, this 10th day of August, 1916.

[Seal United States Circuit Court of Appeals, Second Circuit.]

ALFRED C. COXE,
Judge of the United States Court of Appeals, Second Circuit.

Due and lawful service of the above and foregoing citation on this 11th day of August, 1916, is hereby acknowledged and accepted.

WALTER GORDON MERRITT,
Counsel for Plaintiff in Error.

72 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Dietrich E. Loewe, etc., Plaintiff-in-Error, vs. Savings Bank of Danbury, Defendant-in-Error. Citation. J. Moss Ives, Danbury, Conn., Attorney for Defendant-in-Error. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 11, 1916. William Parkin, Clerk.

Endorsed on cover: File No. 25,543. U. S. Circuit Court Appeals, 2d Circuit. Term No. 713. The Savings Bank of Danbury, of Danbury, Connecticut, plaintiff in error, vs. Dietrich E. Loewe, as surviving partner of the firm of D. E. Loewe & Co. Filed October 9th, 1916. File No. 25,543.